IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1777

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Respondents.**

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents, respectfully pray that this Honorable Court affirm the opinion and judgment of the United States Court of Appeals for the

*Petitioners, who were Plaintiffs in the District Court and Appellants in the Court of Appeals, are Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Co., Inc.

**Respondents are present and former employees of the Petitioners who were represented by Teamsters Local 332, affiliated with the International Brotherhood of Teamsters and who were employed by Petitioners at their Flint, Michigan facilities. The following individuals were designated as Plaintiffs in the consolidated action: Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb (Complete Auto Transit); Delbert Addison, Michael Boudreau, Donald Sears and Gerald Soupal (Auto mobile Carriers, Inc.); Joseph A. Hardacre, Carl S. Letts, Herman C. McCullough, Dennis Stockinger and Edward G. Warner (F.J. Boutell Driveaway Co., Inc.)

Sixth Circuit entered in this proceeding in February 8, 1980 and deny Petitioners' Petition for the issue of a Writ of Certiorari.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet officially reported, appears unofficially at 103 LRRM 2722, and is appended in Petitioners' Petition at APP. A, pp 1a-13a. The opinions of the District Court granting the Motion to Dismiss and denying the Motion for Reconsideration are not reported. They are appended in Petitioners' Petition, respectively as App. B and App. C, pp 15a-19a and pp 19a-21a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on February 8, 1980. Petitioners' Petition for Certiorari was timely filed within 90 days of that date. Jurisdiction of this Court is invoked under 29 USC Sec. 1254(1). Respondents' brief in opposition to Petition for Certiorari has been timely filed within thirty (30) days after receipt of Petition

for Writ of Certiorari.

COUNTER QUESTION PRESENTED

May employees be liable in their individual capacities to their employer in monetary damages for their alleged breach of the collective bargaining agreement under Section 301(b) of the Labor Management Relations Act 2, 29 USCA Section 185 b?

STATUTE INVOLVED

This case involves Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 USC Section 185, printed in the Appendix at App. p la.

STATEMENT OF THE CASE

Complete Auto Transit, Inc., Automobile Carriers, Inc., and F.J. Boutell Driveaway Co., Inc., Petitioners, brought this action pursuant to Section 301 of the Labor Management Act (29USC Section 185) against named and unnamed employees for injunctive and monetary relief as a result of the employees' withholding of their employment services.

STATEMENT OF FACTS

The employers are engaged in the transportation by truck of newly manufactured motor vehicles. All are signatory to an identical collective bargaining agreement entitled the National Master Automobile Transporters Supplemental Agreement which covered their operations.

The employees are drivers and other individuals employed at the employers' Flint, Michigan facilities who are members of Teamsters Local 332. Teamsters Local 332 is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Teamsters Local 332 is a signatory to the collective bargaining agreement with the companies and the Local 332 and the International Union are the exclusive bargaining agency for the employees.

On June 8, 1976, the employees of Complete Auto Transit ceased working. On June 10, the employees of the other two companies engaged

in similar cessation of work. The companies filed the instant action pursuant to Section 301 seeking injunctive relief and damages from the employees. On June 14, 1976, the District Court, after a hearing, denied the companies' request for injunctive relief. The District Court found that the underlying dispute was between the union and its members and therefore not arbitrable under the agreement. The District Court also found that the strikes had not been authorized by the International Union. (Petitioners' App. A, 2a)

On June 16, 1976, the companies filed amended complaints, renewing their request for injunctive relief. After a hearing on the motions on June 21, 1976, the District Court found that the dispute between the union and its members had been resolved and that the only remaining issue pertained to the employees' demand for amnesty from the companies which is arbitrable under the collective bargaining agreement. The District Court concluded that

the work stoppages violated the no-strike clause and that the requirements for injunctive relief were present.

THE PROCEEDINGS BELOW

L. THE DISTRICT COURT

In March of 1977, the employees moved for the dismissal of the consolidated actions. The motion asserted that the request for damages did not state a valid claim for relief. The District Court granted the motion and held that the employees could not be sued for monetary relief in their individual capacities since such relief would frustrate the Congressional purpose behind Section 301 of shielding union members from individual liability. (Petitioners' App. B, 17a)

The companies moved for the reconsideration of the dismissal of the action. The District Court denied the motion. The District Court found the reasoning in Sinclair Oil Corp. v Oil, Chemical, & Atomic Workers Int'l. Union, 452 F2d 49 (7th Cir. 1971) to be in harmony

with the intent of Congress in passing Section 301 and rejected the companies' contention that the Appeals Court in Sinclair had improperly construed the legislative history.

2. THE APPEALS COURT

Upon appeal, the Court of Appeals for the Sixth Circuit affirmed the dismissal of the damage action. The Appeals Court discussed the Seventh Circuit's decision in Sinclair Oil, supra, and agreed with that court's interpretation of the legislative history of Section 301. The Seventh Circuit had concluded that Congress did not intend to create a cause of action under Section 301 for damages against individual union members for breach of the no-strike agreement because of the concern to avoid a repetition of the Danbury Hatters cases.[1] The Appeals Court rejected the contention that this Court's statements in Smith v Evening News Association,

[1]See Loewe v Lawlor, 208 U.S. 274 (1908); Lawlor v Loewe, 235 U.S. 552 (1915), and Loewe v Savings Bank of Danbury, 236 F. 444 (2d Cir. 1916), aff'd, 242 U.S. 357 (1917).

371 U.S. 195 (1962) and Hines v Anchor Motors Freight, Inc., 424 U.S. 554 (1976) involving individual actions arising out of the contract violations by employers supported the existence of a damage action against individual employees. (Petitioners' App. A, 13a)

REASONS FOR DENYING WRIT

I. THERE IS NO CONFLICT BETWEEN ANY COURT OF APPEALS ON THE ISSUE OF EMPLOYEE LIABILITY IN THEIR INDIVIDUAL CAPACITY FOR THEIR ALLEGED BREACH OF THE COLLECTIVE BARGAINING AGREEMENT; ALL COURTS OF APPEAL HAVE CONCLUDED NO INDIVIDUAL LIABILITY. THERE IS NO OVERRIDING ISSUE OF FEDERAL LAW NECESSITATING THIS COURT'S DETERMINATION OF THE ISSUE.

The Sixth Circuit's decision is in harmony with the Seventh Circuit's decision in Sinclair Oil Corp. v Oil, Chemical and Atomic Workers International Union, 452 F. 2d 49, 79 LRRM 2603 (7th Cir 1971) and a subsequently decided Sixth Circuit decision United Steelworkers of America v Lorraine, A Division of Kehring Co., __F. 2d__, 103 LRRM 2637 (6th Cir. 1980). There

are no conflicting decisions emanating from any Circuit Court on the issue of employee liability in their individual capacities for alleged breach of the collective bargaining agreements.

The issue presented in the instant case has been raised in a few District Court proceedings and there has been conflicting determinations.[2] Considering the number of instances the issue could be presented for judicial consideration and determination, and the few times District Courts have been faced with the issue, it must be concluded the issue is not

[2] For cases prohibiting actions against individual employees, see e.g. Westingtonhouse Electric Corp. v Electrical Workers, 470 F. Supp. 1298 (W.D. Pa. 1979); Benada Aluminum Products Co. v United Steel Workers, 83 Lab. Cas. (CCH) Par. 10, 609 (N.D. Ohio 1978); United States Steel Corp. v UMW, Local 8003, 83 Lab. Cas. (CCH) Par. 10, 612 (D. Utah 1978); Lakeshore Motor Freight v Steel Haulers Local 800, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, __F. Supp. ____; 104 LRRM (W.D. Pa. 1980) 2152. For Cases allowing damage actions against individual employees, see, e.g. Certain-Teed v Local 37A, United Steelworkers of America, __F. Supp. ____, 103 LRRM 2052 (N.D. Pa. 1980); Alloy Cast Steel Company v United Steelworkers, 429 F. Supp. 445 (N.D. Ohio 1977); Du Quoin Packing Company v P-156 Amalgamated Meat Cutters and Butcher Workers of North America, 321 F. Supp. 1230 (E.D. Ill. 1971).

widespread or of national concern requiring this Court's determination. Also it must be concluded that it is not in the public interest for this Court to resolve the issue.

If employees were liable in their individual capacities for alleged breaches of the collective bargaining agreement, there would not be an improvement in the viability or stability of collective bargaining relationships nor would peaceful resolution of industrial disputes be furthered; in fact the contrary would probably be true. Presently employers have effective means of dealing with alleged employee breaches. The employer can obtain an injunction if the underlying dispute is subject to the collective bargaining agreement. Boys Markets, Inc. v Retail Clerks Union, Local 770, 398 U.S. 235 at 254 (1970); Buffalo Forge Co. v United Steelworkers of America , 428 U.S. 397 at 407 (1976), and where the activity is unprotected the employer can discipline employees up to their discharge. Emporium Capwell Co. v Western

Addition Community Organization, 420 U.S. 50 at 72 (1875); Atkinson v Sinclair Refining Company, 350 U.S. 238 at 246 (1962).

For all of the above reasons, the Court should conclude there is no necessity for it to grant the writ and determine the issue of employee liability in their individual capacity for their alleged breaches of the collective bargaining agreement.

II. THE SIXTH CIRCUIT'S DECISION IS CONSONANT WITH THE PRINCIPLES SET FORTH IN THIS COURT'S DECISIONS THAT HAVE FASHIONED THE SUBSTANTIVE LABOR LAW.

The Sixth Circuit's decision correctly construed and applied federal labor policy and is consistent with this Court's prior holdings in Textile Workers Union of America v Lincoln Mills of Alabama, 353 U.S. 448 (1957); Smith v Evening News Association, 371, U.S. 195 (1962); Hines v Anchor Motor Freight, Inc., 424 U.S. 554 (1976). The

Sixth Circuit's review of Smith and Hines correctly concluded that neither case stood for the proposition nor is authority for holding it was Congress' intention to create a cause of action for damages against individual employees. In arriving at its conclusion, the Sixth Circuit properly construed each case and assigned to each decision its proper significance. Likewise, the Sixth Circuit attached the proper significance to the decision in Lincoln Mills.

In both Lincoln Mills at 456 and Smith at 199 this Court held that Section 301 has substantive content and that Congress had authorized the Federal Courts to fashion a body of federal law in suits involving alleged violations of the collective bargaining agreements. In Smith at 200 and Hines at 562 this Court concluded Section 301 contemplated and included the coverage of actions involving suits by and against individual employees.

The Sixth Circuit's construction of Smith

and Hines was correct and proper; the Sixth Circuit's decision captures the essence of this Court's decisions in Smith and Hines as they pertain to the development of federal substantive law. Smith at 200 and Hines at 562 acknowledge under Section 301 an employee may sue or be sued for alleged breaches of a collective bargaining agreement and to enforce uniquely personal rights of each under the contract. However, the Sixth Circuit's decision is correct in concluding that the holdings in Smith and Hines as to the reaches of Section 301 does not embrace a money damage action by the employer against its employees in their individual capacities. The Sixth Circuit's determination is, in fact, consistent with this Court's decision in Smith and Hines as well as Congressional intent in creating Section 301 and the rights it intended to establish.

The Sixth Circuit's decision does not establish a gap in the uniform enforcement

of collective bargaining agreements. The Sixth Circuit's decision recognizes that both the employer and employees have access to the Courts to seek enforcement of alleged breaches of the collective bargaining agreement. The employer is able to obtain injunctive relief of alleged employee contractual breaches. Boys Markets, Inc. v Retail Clerks Union Local 770, supra at 254 and the employer is able to exercise the self help remedy of discharge if their employees' action is unprotected. Emporium Capwell Co. v Western Addition Community Organization, supra at 72; Atkinson v Sinclair Refining Company, supra, at 246.

The Sixth Circuit's analysis and decision comports with this Court's decisions in Lincoln Mills, Hines and Smith and is consistent with the language of Section 301 and congressional intention in creating Section 301.

III. THE SIXTH CIRCUIT'S DECISION CORRECTLY INTERPRETED THE LEGISLATIVE

HISTORY OF SECTION 301.

The Sixth Circuit concurred with the construction given by the Seventh Circuit to the legislative history of Section 301 in Sinclair Oil Corp. v Oil, Chemical and Atomic Workers International Union, 452 F. 2d 49 (7th Cir. 1971) (Pet. App. A, 13a). The Seventh and Sixth Circuits properly construed the congressional policy behind the enactment of Section 301 and the legislative history of Section 301 as it related to the issue of employee liability in monetary damages in their individual capacity for alleged breaches of the collective bargaining agreement.

In Sinclair the Seventh Circuit rejects the employer's argument that an implied right exists in Section 301 permitting an employer to sue its employees in their individual capacities for money damages for alleged breaches of the collective bargaining agreement. In reaching its decision, the Seventh Circuit relies upon the language of Section 301(b),

the legislative history surrounding the enactment of Section 301 and the "spectre" of the "Danbury Hatters" decisions upon congressional thinking at the time of the enacting of Section 301. 452 F. 2d at 52. The Seventh Circuit rejected the employer's argument that the legislative history supports a congressional authorization of an employer suit for monetary damages against its employees in their individual capacities. 452 F. 2d at 52. The Seventh Circuit rejected the employer's argument that an implied authorization for such suit exists. The Seventh Circuit found the legislative history of Section 301 indicates congressional principal concerns were to make the unions as a party to the collective bargaining agreement repsonsible for breaches and to avoid subjecting individual union members to the fiscal ruin that confronted the members in the "Danbury Hatters" decision. 452 F. 2d at 52.

The Seventh Circuit rejected the employer's

argument that the no-strike clause in the parties' collective bargaining agreement would be valueless without the employer being able to recover damages against individual employees engaging in wildcat strikes. The Seventh Circuit pointed out Congress in its debates over Section 301 explicitly considered the problem of wildcat strikes and possible remedies; the remedies Congress suggested were discharge and discipline. The Seventh Circuit was unable to find in the congressional debate nor was it willing to assume a congressional intention where none existed that Section 301 be considered as a remedy itself by permitting an employer to recover damages against individual employees for engaging in a wildcat strike. 452 F. 2d at 54.

The Seventh Circuit held:

"We think for us to do so would constitute an unwarranted expansion of that section." 452 F. 2d at 54.

The Seventh Circuit concluded that Congress had considered and rejected the consequences of imposing financial responsibility on union members who engaged in non-tortious unprotected concerted activity as union members by such action as breaching a no-strike clause. Therefore, the Seventh Circuit concluded the implication is that such employees are not liable under Section 301 for breaches such as engaging in a wildcat strike in contravention of a no-strike clause even if the union did not authorize the strike. 452 F. 2d at 54.

In Boys Markets this Court pointed out in deciding injunctive relief would lie against a union for breach of a no-strike clause in the parties' collective bargaining agreement, an award of damages is not an effective remedy for an employer faced with an illegal strike and

> "(W)ould only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union." 398 U.S. at 248.

The Sixth Circuit was correct in concurring with the Seventh Circuit decision in Sinclair. Congress was well aware of the problems an employer might have in enforcing a breach of its no-strike against its employees; but when it enacted Section 301 it did not intend to subject union members engaging in wildcat strikes to individual liability for damages. The employer's primary remedies are obtaining injunctive relief as in Boys Markets, supra 248, or discipline or discharge of individual employees engaging in unprotected activities. Atkinson v Sinclair Refining Company, supra at 246 (1962); Emporium Capwell Co v Western Addition Community Organization, supra at 72.

For all the stated reasons this Court should conclude the Sixth Circuit correctly interpreted the legislative history of Section 301.

IV. THIS COURT'S DECISION IN CARBON FUEL COMPANY V UNITED MINEWORKERS

OF AMERICA DOES NOT DIMINISH THE EMPLOYER'S ABILITY TO OBTAIN JUDICIAL RELIEF FROM ALLEGED EMPLOYEE BREACHES OF THE COLLECTIVE BARGAINING AGREEMENT.

This Court's decision in Carbon Fuel Company v United Mineworkers of America, __ U.S. __ 62 L. Ed 2d 394 (1979) has not altered in any respect the employer's ability to seek enforcement of the terms of the collective bargaining agreement against its employees who may have allegedly breached its terms. One of the basis this Court originally granted certiorari in Carbon Fuel was there was a conflict between the Fourth Circuit and Third Circuit as to the standards to apply in determining what standards should be used in determining the effort a union must exert to obtain an end to the unauthorized strike in order to avoid the imposition of liability. 62 L. Ed. 2d 398. This Court's decision in Carbon Fuel resolved this conflict. The Carbon Fuel decision set forth the standard to

be used in determining if a union should be held financially liable for money damages in an action brought by an employer for alleged breaches of the collective bargaining agreement by its employees. The Carbon Fuel decision set forth the type of acts and conduct a union must have been involved in before it can be held financially liable. 62 L. Ed 2d 400.

This Court's decision in Carbon Fuel in no way alters the employer's remedies against its employee for engaging in conduct in violation of the no-strike provisions of the collective bargaining agreement. The employer has the ability to enjoin the breaches of the collective bargaining agreement as afforded it in Boys Markets, supra at 254 the right to discipline or discharge employees engaging in unprotected activity as afforded it in Atkinson v Sinclair Refining Company, 370 U.S. at 246; Emporium Capwell Co. v Western Addition Community

Organization, supra at 72.

This Court's decision in Carbon Fuel only clarified the employer's right to obtain money damages against the union representing its employees after a conflict arose between the Fourth and Third Circuit; this Court's decision in no way diminished nor disturbed the employer's rights agaisnt its employees who have allegedly breached the no-strike provisions of the parties' collective bargaining agreement.

In the instant case, the employers long before Carbon Fuel was decided opted on their own not to pursue monetary damages against the local (Petitioners' App. A. 9a). Thus, this Court's decision in Carbon Fuel does not contribute to nor make any more important the issue of individual employee damages for alleged breaches of the contract.

CONCLUSION

For the foregoing reason, Respondents'

respectfully submit Petitioners' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

SUBCHAPTER IV - LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purpose of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and pro-

ceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 51 Stat. 156.